

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DANA SERAFIN, BAILEY SERAFIN,  
and LIXEY FISH COMPANY,

Plaintiffs,

v

Case No: 1:23-CV-412

THOMAS GONIEA, in his individual  
and official capacity; JAMES  
DEXTER, in his individual and  
official capacity; SETH HERBST,  
in his individual and official  
capacity; and THE MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES,

Defendants.

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PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

DEFENDANTS' MOTION TO DISMISS

BEFORE THE HONORABLE PAUL L. MALONEY  
United States District Judge

Kalamazoo, Michigan  
Wednesday, July 24, 2024

1 APPEARANCES:

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25

1 Kalamazoo, MI

2 July 24, 2024

3 1:35 p.m.

4 RECORD

5 THE COURT: You may be seated. Thank you. This is  
6 File Number 23-412, Serafin, et al., versus Goniea, et al.  
7 This matter is before the Court for motion hearings on  
8 plaintiffs' motion for partial summary judgment and  
9 defendants' motion to dismiss. The record should reflect that  
10 Attorneys Koger and Young represent the plaintiffs. Attorneys  
11 Aloe and Drake represent the defendants. The Court is ready  
12 to proceed. Let's do the motion to dismiss first, and then  
13 we'll go on from there.

14 Counsel, you may proceed.

15 MS. ALOE: Good afternoon, your Honor.

16 THE COURT: Good afternoon.

17 MS. ALOE: Assistant Attorney General Echo Aloe on  
18 behalf of the state defendants.

19 Under Michigan law, there is no right to have a post-1968  
20 commercial fishing license renewed. This is fatal to every  
21 claim in plaintiffs' amended complaint, which the Court should  
22 dismiss for three reasons primarily. First, plaintiffs failed  
23 to establish that this Court has jurisdiction over the  
24 Michigan Department of Natural Resources, so to the extent  
25 that any claim, regardless of the relief, is brought against

1 the department, or against its employees in their official  
2 capacity for money damages, the same is barred by the Eleventh  
3 Amendment.

4 Second, each of plaintiffs' 1983 claims fail as a matter  
5 of law under both the ex parte Young and qualified immunity  
6 analyses because -- because a commercial fishing license  
7 issued after 1968 does not renew as a matter of course.

8 And finally, the third reason is that the jurisdictional  
9 and substantive defects discussed above dispose of all of the  
10 federal claims, leaving plaintiffs' requests under the  
11 Declaratory Judgment Act, which is not an independent cause of  
12 action, and their state law claims, which this Court should  
13 not exercise subject matter jurisdiction over.

14 Turning to the first argument, the State will rest on the  
15 arguments laid out in our brief in support of motion to  
16 dismiss and reply in support unless if your Honor has any  
17 questions for me.

18 THE COURT: Not at the moment. Go ahead.

19 MS. ALOE: So the second reason, and this is really  
20 the crux of this case, to get around the employee's right to  
21 sovereign immunity for any sort of injunctive relief under ex  
22 parte Young or their right to qualified immunity for  
23 plaintiffs' individual capacity claims, plaintiffs need to  
24 show that they have a constitutionally protected property  
25 right, and they cannot do that here.

1           From Seminole cases of Board of Regents v Roth, and Perry  
2           versus Sindermann, the Supreme Court has provided that a  
3           property right exists where a plaintiff can show the right  
4           exists under law or there was a reasonable basis to support  
5           that a property right exists. To quote Sindermann, "A  
6           person's interest in a benefit is a property interest for due  
7           purposes if there are such rules or mutually explicit  
8           understandings that support his claim of entitlement to the  
9           benefit." Here, Part 473, commercial fishing of the Michigan  
10          Natural Resources and Environmental Protection Act does not  
11          provide plaintiffs a legal basis to claim a property right and  
12          the continued renewal of the Harbor Beach license.

13          Under the substantive law, plaintiffs have licenses that  
14          fall under the grandfathering provision. It is not disputed  
15          in this matter that the Harbor Beach is not covered by that  
16          provision. Thus when a license issued under Part 473 doesn't  
17          fall under the grandfathering provision, then 324.47302(1)  
18          applies, and this leaves it to the discretion of the  
19          department whether or not to issue a license.

20          As Med Corp., Inc., v City of Lima at 296 F.3d 404 at  
21          410, which is a Sixth Circuit 2002 opinion, quote, "A party  
22          cannot possess a property interest in receipt of a benefit  
23          when the benefit is wholly discretionary." Thus, the first  
24          way that Roth and Sindermann instruct us to determine if there  
25          is a property right for due process purposes is under the law.

1 That's ruled out here.

2 The next way, as seen in Perry versus Sindermann, is  
3 there might be a situation under which there is a mutual  
4 understanding that provides an individual with a protected  
5 property right. In Sindermann, it was the faculty handbook  
6 that gave the plaintiff, at least as the Supreme Court said,  
7 the right to show whether that property right exists. But  
8 here, on the face of each license issued to the plaintiffs to  
9 fish at Harbor Beach, the license explicitly said it expired  
10 on a date certain, which is also under Part 473, but it also  
11 said that the license was not subject to automatic renewal and  
12 that either party could refuse to renew it without cause until  
13 such time as the commercial fishing statute was amended.

14 Given these facts, it's unreasonable to believe that  
15 plaintiffs had any legitimate claim of entitlement to renew,  
16 rather than had a unilateral expectation that the department  
17 would continue to renew the Harbor Beach license.

18 Under these Seminole cases, the plaintiffs don't have a  
19 property right, and this is fatal to each 1983 claim they  
20 bring against the state defendants because they all hinge on a  
21 protected property right.

22 THE COURT: What impact does the Bundo case have?  
23 The liquor license case.

24 MS. ALOE: The Bundo case has no impact on the facts  
25 here. Bundo also relied on Roth and Sindermann to decide

1       whether under the Michigan liquor license act, if that  
2       substantive law gave that plaintiff a protected property right  
3       and renewal, and the Court in Bundo held that under the  
4       applicable statute, renewal was to take place as a matter of  
5       course. That's distinguishable from Part 473, which only  
6       provides that if a license was issued on or before November  
7       15, 1968, that the licensee has a right to renewal.

8               And again, here, the Harbor Beach license there's no  
9       dispute was issued after the grandfathering provision, and so  
10      it can't renew under a matter of course under the law.

11             THE COURT: All right. Thank you.

12             MS. ALOE: And then just briefly, the third reason  
13      is without that property right, all of plaintiffs' federal  
14      claims fail, and they have brought claims asking for  
15      declaratory judgment under the Declaratory Judgment Act, which  
16      is not an independent cause of action, and so if the Court  
17      dismisses their 1983 claims, it must dismiss those claims as  
18      well, and then the Court should not exercise supplemental  
19      jurisdiction over plaintiffs' state law claims for the reasons  
20      outlined in our brief.

21             THE COURT: Help me with the collision between the  
22      Administrative Procedures Act, which the plaintiff directs me  
23      to, and NREPA in this context. You agree that they're in  
24      conflict, correct, I assume?

25             MS. ALOE: I agree that it's a bit of a perplexing

1 argument that plaintiffs raise that both the Harbor Beach  
2 license did not expire under the Administrative Procedures Act  
3 but also that the state took their property when it refused to  
4 renew it. But the inconsistency of their arguments doesn't  
5 just undermine their position here, it's really an irrelevant  
6 matter. Even assuming the Administrative Procedure Right or  
7 Act overrides the explicit provision in Part 473 that all  
8 commercial fishing licenses expire on December 31 of the year  
9 they were issued, it doesn't change anything because, again,  
10 going back to Bundo, we look at the substantive law, not the  
11 Administrative Procedures Act, to determine whether a person  
12 has a protected property right for the due process. Under  
13 Part 473, it's clear that the Harbor Beach license does not  
14 fall into the grandfathering provision, and as such, no right  
15 exists.

16 As I've discussed, when the Court considers how to decide  
17 whether a property right exists, it uses Roth-Sindermann  
18 framework, and so whether the license expired on December 31  
19 of 2022, in conjunction with both the law and the face of the  
20 Harbor Beach license itself, or if it expired on March 1,  
21 2023, when the department decided to issue plaintiffs their  
22 Saginaw Bay licenses and not their Harbor Beach license, it  
23 doesn't change the analysis before this Court because there's  
24 still no right to renewal.

25 THE COURT: Thank you. You're closest to the



1 podium, Mr. Koger, are you going to argue?

2 MR. KOGER: This might be too much information, but  
3 I was in the state of Georgia getting sworn into the State Bar  
4 of Georgia, got tied up in the Atlanta debacle, Delta  
5 Airlines.

6 THE COURT: My sympathy.

7 MR. KOGER: Bought a car, drove back home.

8 THE COURT: From Atlanta?

9 MR. KOGER: Yes, your Honor. We were already  
10 planning on buying a car, a mini van for the third kid, but  
11 Mr. Young is well prepared and I have full faith in his  
12 abilities.

13 THE COURT: That's fine. I didn't realize you had  
14 that difficulty. Delta in particular had major issues if I  
15 understand the press correctly.

16 MR. KOGER: It was a nightmare. Especially for the  
17 little babies that were stranded in the airport. But that's  
18 probably too much information. Thank you.

19 THE COURT: Mr. Young, you may proceed sir.  
20 Welcome.

21 MR. YOUNG: Thank you, your Honor.

22 THE COURT: Is this the first time you have been  
23 here, Mr. Young?

24 MR. YOUNG: Yes, sir, your Honor.

25 THE COURT: Well, welcome.

1 MR. YOUNG: Thank you.

2 Your Honor, I would like to focus on the Administrative  
3 Procedures Act aspect of this, because I think that really  
4 goes to the heart of the dispute. And so the defendants, in  
5 their opposition to our motion for partial summary judgment,  
6 conceded that we had a property right in the Harbor Beach  
7 license. Now, their language is under the controlling law,  
8 plaintiffs' property right in the Harbor Beach license expired  
9 on December 31, 2022. That concession is fatal to them  
10 because, as was discussed a bit, we have the Administrative  
11 Procedures Act provision that states, and I'll give you the  
12 language, "When a licensee makes timely and sufficient  
13 application for renewal of a license or a new license with  
14 reference to activity of a continuing nature, the existing  
15 license does not expire until a decision on the application is  
16 finally made by the agency, and if the application is denied  
17 or the terms of new license are limited, until the last day  
18 for applying for judicial review of the agency order or a  
19 later date fixed by order of the reviewing court." That's MCL  
20 Section 24.291(2). What that means here, your Honor, is that  
21 we applied for the license timely, which I don't think is  
22 contested --

23 THE COURT: Please don't hit the microphone. It  
24 will take me months to get it replaced.

25 MR. YOUNG: Sorry, Your Honor.

1 THE COURT: That's okay. I'm joking with you. Go  
2 ahead.

3 MR. YOUNG: Plaintiffs timely applied for their  
4 license. Second, there's no final agency order, there's no  
5 final agency decision, and so to harmonize these two statutory  
6 provisions, which you recognize the tension between, the way  
7 to harmonize it is like this: If as here there's timely  
8 application, the license either does not expire or it's  
9 rendered unexpired; otherwise, the government could play games  
10 with this and just delay the time for applying until after  
11 expiration, which would then be the government kind of trying  
12 to avoid the reach and the consequences and limitations and  
13 restrictions that the Administrative Procedures Act imposes,  
14 and that can't be the answer, your Honor.

15 THE COURT: Well, the discretion, if I read the  
16 statute correctly, and come back at me if you disagree, the  
17 NREPA statute appears to grant to the department very  
18 significant discretion in the terms of the issuance of the  
19 licenses. Would you agree with that?

20 MR. YOUNG: The statute does grant discretion to the  
21 agency, but it's not unlimited discretion. It is cabined by  
22 other provisions in the commercial fishing statute itself, but  
23 it's also limited and restrained by the Administrative  
24 Procedures Act itself. And in the very same statute on a  
25 later section, Section 4, there's a provision that

1 specifically contemplates the Administrative Procedures Act  
2 applying when the agency is taking an adverse action on  
3 someone's license. And I can -- I've got the language here.  
4 It's MCL Section 324.47302, "The department may suspend or  
5 revoke any license issued under this part if the licensee  
6 fails to fulfill or violates any of the conditions, terms, or  
7 restrictions of the license. The department shall afford the  
8 licensee a hearing in accordance with the Administrative  
9 Procedures Act of 1969, Act Number 306 of the Public Acts of  
10 1969." The citation goes on, "Any person whose license has  
11 been suspended or revoked is not eligible to apply for or  
12 receive license for the ensuing two calendar years following  
13 the suspension or revocation," so the statute itself  
14 contemplates this interaction between the commercial fishing  
15 statute and the Administrative Procedures Act.

16 Also, the adverse action here, the failure to renew, as  
17 you mentioned, the agency has discretion, but it needs to  
18 have -- it needs to afford notice and an opportunity to be  
19 heard to a license holder. My clients, they had a license. I  
20 don't think there's any dispute on that. Again, they timely  
21 applied. The agency wanted to take an adverse action, which  
22 it can do, but subject to procedures. And because they timely  
23 applied, and because of the way the Administrative Procedures  
24 Act interacts here, there was a protected property interest.  
25 It never went away. Maybe there's some counterfactual world

1 without the Administrative Procedures Act, but we're not in  
2 that world.

3 THE COURT: How do you read the "Notwithstanding"  
4 clause at the beginning of 47302(1)? It reads,  
5 "Notwithstanding the provisions of this or any other part or  
6 act," and then it goes on for a while.

7 MR. YOUNG: I see, your Honor, yes.

8 THE COURT: Why doesn't that eliminate any impact to  
9 the Administrative Procedures Act on this question when the  
10 statute says "notwithstanding"?

11 MR. YOUNG: So that is an impermissible delegation  
12 to the agency. So the legislature cannot --

13 THE COURT: Under state law?

14 MR. YOUNG: Yes, under state law. The Michigan  
15 legislature lacks the authority to empower the agency to pick  
16 and choose which other laws will govern and restrain the  
17 agency subject to the Fourteenth Amendment's due process  
18 clause.

19 THE COURT: Well, the legislature, legislative and  
20 executive branches of government are the policymakers for the  
21 state, correct?

22 MR. YOUNG: Correct.

23 THE COURT: I mean, what meaning should I -- in the  
24 context of this case, what meaning should I place in the  
25 "notwithstanding" clause, vis-a-vis the Administrative

1 Procedures Act? I mean, I can't read it out of the statute.  
2 I've got to give it meaning. And in the context of this case,  
3 there's a major conflict between the discretion granted to the  
4 department under NREPA and the four squares of the  
5 Administrative Procedures Act section that you have cited to  
6 me. But in analyzing 47302(1), I've got to give some meaning  
7 to the "notwithstanding" clause which, which, given its plain  
8 meaning, would appear to say that NREPA trumps the  
9 Administrative Procedures Act in the context of the subject  
10 matter of this particular section of NREPA. So with that  
11 introduction, I'll turn it over to you. Go ahead.

12 MR. YOUNG: It's an excellent question, your Honor,  
13 and I think the best way to harmonize this tension is that  
14 it's not our position or -- the agency has authority to take  
15 certain actions, but only if it follows the rules, only if it  
16 gives the process that's due both under the United States  
17 Constitution's Fourteenth Amendment due process clause but  
18 also under the Administrative Procedures Act.

19 So the Administrative Procedures Act is not a full  
20 barrier to the agency reaching some sort of conclusion, but  
21 rather it just -- it acts as guardrails to make sure that the  
22 government doesn't run roughshod over people's property  
23 rights. And so it's -- it's not a full-on barrier. It's just  
24 a constraint. So the agency, if it did follow the rules, it  
25 potentially could refuse to renew a license, or it potentially

1 could refuse to add species or what have you, it just has to  
2 follow the rules. And here what we're saying is that the  
3 government took adverse action on my clients' property rights  
4 without following the rules. That's really the heart of it.  
5 And so that is a way to alleviate the apparent tension between  
6 the commercial fishing statute on the one hand and the  
7 Administrative Procedures Act on the other hand.

8 Now, I'll concede it would be a different case if the  
9 Administrative Procedures Act just said, like, agency, you  
10 cannot reach X conclusion, but that's not what it's saying.  
11 It's just laying out a process if the government wants to  
12 reach certain conclusions and make certain adjustments to  
13 people's property rights, so to speak.

14 Does that answer your question, your Honor?

15 THE COURT: I appreciate the response. If I  
16 appreciate the chronology here, your client had a research  
17 permit from '15 to '19. Am I right so far?

18 MR. YOUNG: I believe that's correct. I'd have to  
19 double-check to be sure, but there was that initial phase of  
20 it being a research permit.

21 THE COURT: When is it -- what year do you believe  
22 from your perspective that your client was possessing a  
23 property right to this particular license? Because clearly  
24 the research permit wasn't it, right? Am I right about that?

25 MR. YOUNG: Correct.

1 THE COURT: Okay. So when from your perspective did  
2 your client process a property right which is the subject  
3 matter of the violation of the Constitution that you believe  
4 is appropriate here?

5 MR. YOUNG: So, your Honor, in 2020, that is when we  
6 switched from the research permit to a commercial fishing  
7 license.

8 THE COURT: All right. In 2020, if I understand it  
9 correctly, there were conditions attached to that license,  
10 correct?

11 MR. YOUNG: That is an excellent question, your  
12 Honor.

13 THE COURT: I'm really glad I ask good questions,  
14 because that's any intention.

15 MR. YOUNG: I'm happy to discuss these conditions.  
16 So, your Honor, on the face of the license, there are apparent  
17 conditions; however, the agency lacks the authority to impose  
18 any old condition it wants. And, yes, in the statute there is  
19 a subsection that contemplates other conditions on licenses.  
20 That is true. We do not dispute that. What we dispute,  
21 however, is the permissible scope of those conditions, and the  
22 way that we encourage you to understand that provision is by  
23 looking at the example conditions that are right there in the  
24 language, and those examples go to how commercial fishing is  
25 conducted as opposed to whether commercial fishing can be



1 conducted. And those examples are the right to inspect  
2 licensee's fishing operations in the waters, the right to  
3 inspect on board, like on board the vessel, and then the right  
4 to inspect the fishing operations ashore. So those examples  
5 give a good indication of the nature and scope of what these  
6 other conditions can be. So when the agency tries to say,  
7 well, other conditions, and we can just kind of put in what we  
8 want to put in, that doesn't fly with the plain ordinary  
9 meaning of the text that we have there in the statute.

10 And then additionally, the government is always obligated  
11 to abide by the U.S. Constitution, the Michigan Constitution.  
12 It can't contract around that. It can't form agreements to  
13 get around that. And so these conditions, here especially  
14 this, what we'll call the Sophie's Choice condition of you can  
15 use Harbor Beach licenses or the Saginaw Bay hostage licenses,  
16 that is a condition that goes beyond the agency's authority to  
17 impose, even if the person or entity the government purports  
18 to be interacting with is supposedly on board.

19 Because like I said, the government always has to abide  
20 by the Constitution, so even if it says to the other person,  
21 oh, are you okay, the other person says, sure, that doesn't  
22 absolve the government of its obligation.

23 Additionally, the government's position, at least  
24 implicitly, supposes that someone can be on equal footing or  
25 near equal footing with the government during bargaining, but,

1 I mean, that's just not so. The government has the monopoly  
2 and the legitimate use of force, and because of that, we have  
3 the unconstitutional conditions doctrine to precisely guard  
4 against a situation where the government has hugely more  
5 bargaining power that it can impose and bear against anyone  
6 else.

7 THE COURT: The conditional license of 2020 gets  
8 reissued in 2021 without incident, for lack of a better term,  
9 agreed? Am I right about that?

10 MR. YOUNG: Yes, although our position is that there  
11 are not conditional licenses or unconditional licenses. There  
12 are just licenses. But otherwise --

13 THE COURT: All right. In 2022 is the point at  
14 which the department comes back or comes to your client and  
15 says essentially, this is my words, not theirs, they wanted to  
16 retire the Saginaw Bay licenses and made it clear to your  
17 client that if they wanted the Harbor Beach license he was  
18 going to have to relinquish the Saginaw Bay licenses? Am I  
19 right?

20 MR. YOUNG: Yes, your Honor.

21 THE COURT: Okay. What's wrong with that? Isn't  
22 the department entitled to -- apparently, and I'm reading  
23 between the lines here, but apparently the department made a  
24 policy judgment that they wanted to retire the Saginaw Bay  
25 licenses, probably because they were subject to the -- they

1       were prior to 1968. Again, I'm inferring. Why can't the  
2       department make that judgment?

3               MR. YOUNG: Well, so, your Honor, it might be  
4       possible that the department could do that, but subject to the  
5       applicable processes. And here, your Honor, the department  
6       never substantiated its position that it would be somehow  
7       better for the fisheries of Michigan for these licenses to be  
8       retired. Instead the agency has adopted a kind of  
9       just-trust-us perspective, and I just want to remind your  
10      Honor we are at the pleading stage, so to the extent that the  
11      government is trying to offer a different version of the  
12      facts, that type of argument is not available to the  
13      government at this stage.

14             THE COURT: All right. Your client has never been  
15      denied the Saginaw Bay licenses, correct?

16             MR. YOUNG: We have the licenses. We have been --  
17      we have been fishing the Harbor Beach license. And then the  
18      government, as you said, started to say, well, no, you need to  
19      pick, and then we refused. Another year goes by, and the  
20      government says, no, you really need to pick, and, again, we  
21      refuse. And then the government says, okay, you don't get  
22      Harbor Beach, you have Saginaw, the Saginaw Bay hostage  
23      licenses. And then subsequent year after that, again, we  
24      apply for both sets, and then the government says, not only do  
25      you not get Harbor Beach, it doesn't exist anymore, so not

1 just failure to renew, but trying to remove it from ever  
2 having occurred.

3 But, your Honor, there's another thing I want to  
4 highlight. There's two sets of Saginaw Bay licenses. There's  
5 the hostage ones, the ones that are part of the Sophie's  
6 Choice, but then there's another set which we call the Saginaw  
7 Bay species licenses.

8 THE COURT: Saginaw Bay?

9 MR. YOUNG: Species.

10 THE COURT: Oh, species?

11 MR. YOUNG: And with those, your Honor, we requested  
12 certain species to be added and the agency declined, but,  
13 again, never gave us notice or an opportunity to be heard.  
14 Does that answer your question?

15 THE COURT: Okay. Yes. Thank you.

16 MR. YOUNG: Let's see. Your Honor, regarding ex  
17 parte Young and sovereign immunity, we'll largely rely on the  
18 paper briefing on that, but I just will emphasize that the  
19 government's argument really seems to circle around this idea  
20 of the lack of a constitutional violation, and as we have been  
21 discussing in our paper briefing, we assert that they're --

22 THE COURT: Right. And in order for there to be a  
23 constitutional violation, whether it be procedural due process  
24 or substantive due process, your client has to have a property  
25 interest.

1 MR. YOUNG: Uh-huh.

2 THE COURT: In the license, correct?

3 MR. YOUNG: Correct. And, your Honor, I just want  
4 to emphasize that there's the Harbor Beach license, and  
5 there's a property right in that license for the reasons  
6 described with the APA, fits into that. But also, your Honor,  
7 there's the hostage licenses, the ones -- the Saginaw Bay  
8 ones, part of Sophie's Choice, and I don't think anyone  
9 disputes that we have a property right in those because those  
10 are pre-1968. And the -- we were denied due process and  
11 substantive process with those by the -- or rather it's an  
12 unconstitutional condition and a taking, rather, when the  
13 government says, you have got this property right, but for you  
14 to use it you need to give up this other piece of property  
15 that you have, the Harbor Beach license. That condition was  
16 also a violation.

17 And then additionally a third set of property, the  
18 species licenses, when we apply and say, hey, we would like to  
19 have these species added, government says no, but without  
20 notice and an opportunity to be heard, that is also a  
21 constitutional violation.

22 THE COURT: All right. As far as the -- let me see  
23 if I understand what appears to be a separate issue on the  
24 issue of the expansion of the species licenses. That was  
25 never tied to Harbor Beach, correct? That was a separate --

1 well, I should ask the question. Was that a separate request  
2 by your client unrelated to any tie to the Harbor Beach  
3 situation?

4 MR. YOUNG: Yes, your Honor, it -- they were --  
5 unlike the hostage Sophie's Choice Saginaw Bay licenses where  
6 those are intertwined with Harbor Beach, the species licenses  
7 were separate, though requests were made at the same time, but  
8 they're not kind of interlocked like the first two sets.

9 THE COURT: And the species license, recognizing you  
10 want expansion, but the species licenses were never denied to  
11 your client, correct?

12 MR. YOUNG: We have the licenses, but the government  
13 refused our request to make the species changes and also did  
14 not give us notice or an opportunity to be heard on that  
15 issue.

16 THE COURT: All right. Thank you. I understand. I  
17 understand your argument in that regard. Okay. Thank you. I  
18 don't mean to cut you off.

19 MR. YOUNG: And then regarding qualified immunity,  
20 we'll largely rely on our papers, but just a few points to  
21 emphasize there. A reasonable government official would  
22 understand that the conduct here amounted to constitutional  
23 violations. The constitutional rights here are not new.  
24 Procedural due process, substantive due process, retaliation,  
25 unconstitutional conditions, all of that has been well settled

1 for years and years. So that's all I'll say unless you have  
2 more questions about qualified immunity.

3 THE COURT: No, I do not.

4 MR. YOUNG: And then another point I wanted to bring  
5 up, your Honor, is the government has not engaged with  
6 Plaintiff Bailey and -- Plaintiff Bailey and Plaintiff Dana,  
7 two legally distinct entities. There's been interactions and  
8 communications between the government and Plaintiff Dana, but  
9 Plaintiff Bailey, again, that's a distinct legal entity, has  
10 his own constitutional rights, and I think it's really to the  
11 government's sort of peril to just kind of ignore him. So any  
12 kind of analysis that the government has done regarding Dana  
13 does not on its own just automatically get punted over to  
14 Bailey.

15 For instance, the government has arguments about, oh, it  
16 said this to Dana and Dana said this back, but it doesn't  
17 simultaneously offer arguments concerning, well, what did  
18 Bailey say, what did Bailey do. And so I just want to  
19 emphasize for the Court that Bailey has his own distinct  
20 independent constitutional rights that also need to be  
21 adjudicated. And I think the government is bordering on  
22 forfeiture by not offering arguments specifically about  
23 Bailey.

24 THE COURT: Thank you, Counsel.

25 MR. YOUNG: Thank you.

1 THE COURT: Counsel?

2 MS. ALOE: Your Honor, there are several things I  
3 heard brother counsel mention that I would like to respond to.  
4 The first is this idea of retiring, exchanging the licenses,  
5 which they use the colorful language of Sophie's Choice to  
6 describe this. But as the record clearly shows at ECF 43-2,  
7 1366-1368, these were Dana Serafin's offers to exchange  
8 licenses for the opportunity to fish at Harbor Beach going  
9 back to a time when I was still in high school. So it is well  
10 established that these are his --

11 THE COURT: Should I ask who the president of the  
12 United States was at the time? But I won't. Okay. Go ahead.

13 MR. YOUNG: Okay. All right. I think I know it,  
14 but, you know, I have property rights on my mind today.

15 As far as this idea of conditions, your Honor has already  
16 ruled on this in denying plaintiffs' motion for preliminary  
17 injunction back in May of 2023. Your Honor held that the MDNR  
18 has broad power, to quote, "This broad power allows the MDNR,  
19 through the powers conferred to it by the state legislature,  
20 to place other conditions, terms, and restrictions on licenses  
21 as provided in Section 324.47302(2)(e). The Court finds that  
22 the conditional/non-automatic renewable language in the Harbor  
23 Beach license allows plaintiffs or the state to reject future  
24 issuance of licenses without cause until such time as a  
25 permanent license is negotiated, is entirely valid." I



1 believe that on the face of the Harbor Beach license, you  
2 know, you asked brother counsel about the timeline here, and  
3 your Honor's correct from '15 to '19 they were issued a  
4 research permit, and then it changed to a conditional license.

5 THE COURT: I take it the state had some interest in  
6 finding out what the state of the whitefish population was in  
7 this particular piece of the lakes?

8 MS. ALOE: Of course it did, so that is part of the  
9 reason that it decided to enter into this agreement with the  
10 plaintiffs. And as far as the conditions go, at ECF 24 498  
11 Note 9, again quoting your Honor, in that note the Court says  
12 that, you know, above the line, the condition -- the Court  
13 says, "Plaintiffs cannot now claim unconstitutionality for a  
14 condition they asked for," but below the line at this Note 9,  
15 the Court goes through the analysis under the Nolan-Dollan  
16 whether the condition is unconstitutional, and it found that,  
17 "An essential nexus existed between the legitimate state  
18 interest in managing and protecting the state's fishery and  
19 permit condition, which required the exchange of licenses and  
20 harvest opportunities. Because the MDNR had  
21 biological/conservationist goals in mind when conditioning" --  
22 excuse me, "goals in mind when conditioning the Harbor Beach  
23 license on exchange of the Saginaw Bay licenses, the Court  
24 finds an essential nexus existed."

25 So I think that the record pretty clearly shows that as

1 far as plaintiffs' unconditional conditions argument goes,  
2 they can't now claim that what they proposed is  
3 unconstitutional by the state, and even if it were, and this  
4 is outlined in our brief in support of motion to dismiss, even  
5 under the Nolan-Dollan there's that essential nexus between  
6 the state's interest and the conditions placed on the Harbor  
7 Beach license.

8 I would also like to take a moment to point out that this  
9 case has been pending before the Court for 460 days  
10 approximately, and at no point have the plaintiffs discussed  
11 how the Harbor Beach license would fare under this  
12 Roth-Sindermann analysis. And I think that that's pretty  
13 telling, because under that analysis, as I've already  
14 discussed today and have briefed extensively between the two  
15 motions we're here to discuss today with your Honor, this case  
16 is not on all fours with Roth, but it has so many --  
17 acknowledges facts, including as the Court found in Roth, Roth  
18 had a fixed term of one year to teach at the university.  
19 Plaintiffs here had a fixed term. I wouldn't necessarily call  
20 it conceding, but the state doesn't dispute that from March  
21 16, 2022, until December 31, 2022, the plaintiffs had a  
22 protected property right to fish at Harbor Beach. There's no  
23 dispute there. And if the state had taken an action at any  
24 time in that time frame to revoke or suspend, Part 473 at  
25 47302(4) provides that if the agency wanted to revoke or

1 suspend the license, it was subject to the contested case part  
2 of the Administrative Procedures Act. That's not what's been  
3 alleged here. On the face of plaintiffs' complaint, they  
4 complain about not having a license renewed.

5 In our reply brief at ECF 59, Page ID 1733, we outline  
6 how under both Part 473 and the APA renewal is not subject to  
7 either procedure. And as your Honor pointed out, unless a  
8 license falls under this grandfathering provision, which we  
9 know the Harbor Beach license doesn't, then notwithstanding  
10 the department has a discretion whether to issue commercial  
11 fishing licenses, and it must have this discretion. Managing  
12 natural resources, especially one as volatile as fish that are  
13 subject to so many influencing factors, has to be in the  
14 discretion of the department to manage to some extent.

15 I would also like to point out, and this is kind of  
16 veering into plaintiffs' motion, but I heard -- I heard  
17 brother counsel up here today saying that the department  
18 violated due process when they didn't add species to their  
19 other licenses. We briefed this issue in response to their  
20 motion for partial summary judgment. And claims were not  
21 alleged as violations of due process. They're clearly state  
22 law claims on the face of the complaint, and at ECF 43, Page  
23 ID 1209, Paragraph 10, plaintiffs say that this Court has  
24 supplemental jurisdiction over their state law claims as  
25 briefed, and we can discuss this more when we move on to

1 plaintiffs' motion today, it can't now ambush the department  
2 by making these claims anything but what they are, and they're  
3 clearly brought under state law.

4 And then finally I will just reiterate the plaintiffs'  
5 argument when it comes to how the Administrative Procedures  
6 Act interacts with Part 473. If we take their argument on  
7 face value that it was a continuing nature and so timely  
8 applying it didn't expire, the department made a final  
9 decision when it issued the Saginaw Bay licenses and not the  
10 Harbor Beach license on March 1, 2023, also reflected in the  
11 letter sent from the Department of Attorney General to  
12 plaintiffs on March 2 reiterating that point. But, again, it  
13 is not the APA that gives an individual a protected property  
14 right. It is the substantive law, and plaintiffs find no  
15 shelter in 473 for the Harbor Beach license.

16 THE COURT: All right. Thank you. Mr. Young, go  
17 ahead, sir.

18 MR. YOUNG: Thank you. Your Honor, I just want to  
19 touch on a few things that sister counsel raised. Regarding  
20 Sindermann, the -- my clients here have the commercial fishing  
21 licenses, and just as in these Michigan Supreme Court cases  
22 where there was the kind of distinction between the one  
23 professor who had the expectation and the one who did not, in  
24 our situation here, the APA acts as kind of the additional  
25 bit, just like the handbook in one of the U.S. Supreme Court

1 cases where my clients and other licensees could think, oh, if  
2 I apply timely, then I will get notice and an opportunity to  
3 be heard on my license before the agency takes some adverse  
4 action to it.

5 And then also sister counsel mentioned a final decision.  
6 A letter from the Department of the Attorney General is not a  
7 final decision from the DNR, and there's never been an agency  
8 order that's been issued either. Let's see. Oh, sister  
9 counsel also mentioned the nexus analysis. And regarding  
10 that, even if there is a nexus, there's still the issue of  
11 just compensation for the taking of the property. But in  
12 addition, and perhaps just as importantly or even more  
13 importantly, the other aspect of that analysis is the rough  
14 proportionality element which has never been addressed,  
15 because even if there is a nexus, the next step is is there a  
16 rough proportionality between the plaintiffs' property, what  
17 that person wants to do, and the consequences of taking it,  
18 and the supposed benefits to the public if the government  
19 does, in fact, take the property. That's never been  
20 addressed. And especially at the pleading stage, we allege  
21 that that proportionality is such that it's unconstitutional.  
22 But, again, the agency never addressed that.

23 And in addition, your Honor, I just want to reemphasize  
24 that in the section of the commercial fishing statute that has  
25 the other conditions, later down in Subsection 4 of the same

1 section, it specifically contemplates the applicability of the  
2 APA. I just wanted to reemphasize that. If you have any  
3 other questions, your Honor, on this, I'm happy to field them,  
4 but I'm also happy to wait for the summary judgment.

5 Two last points, your Honor. Again, sister counsel  
6 concedes that my clients had a property interest in the Harbor  
7 Beach license from I think it was March to December, and  
8 property rights don't just vanish. And as there's been  
9 discussion today, the APA interlocks to stop the expiration of  
10 the license so that disputes about it can be adjudicated so  
11 that the government doesn't run roughshod over the holders of  
12 commercial licenses.

13 THE COURT: Thank you, Counsel.

14 We have got a (b) (6) motion on the First Amendment as  
15 well. Let's move to that one at this point.

16 MS. ALOE: Yes, your Honor, and, you know, I'm sure  
17 we have already beat this horse, but their First Amendment  
18 claim also rests on a property issue, because they said that  
19 the department took an adverse action against plaintiffs  
20 because plaintiffs said that they would not exchange their  
21 Saginaw Bay licenses for their Harbor Beach license. We  
22 briefed this issue how the record firmly shows that this idea  
23 of an exchange goes back years in the making, first offered by  
24 Dana Serafin and then incorporated into the 2015 through 2019  
25 research permits and the 2020 to 2022 Harbor Beach license.

1 And that before Dana engaged in the protected speech, it was a  
2 choice between Harbor Beach or the Saginaw Bay licenses.  
3 After he engaged in the protected speech, it was a choice  
4 between the Harbor Beach license and the Saginaw Bay licenses.  
5 The department didn't take an adverse action because of Dana's  
6 speech. It was simply trying to negotiate a permanent license  
7 as contemplated since as early as 2008.

8 So unless if your Honor has any other questions, the  
9 state will rest on its brief on the First Amendment issue.

10 THE COURT: Thank you. Counsel, go ahead.

11 MR. YOUNG: Thank you, your Honor. Just a couple  
12 points here. Sister counsel is trying to make the free speech  
13 claim about property, but the free speech claim, naturally, is  
14 about free speech. And my client expressed a grievance to the  
15 government, and there's really probably no more speech  
16 deserving of protection than when a citizen is speaking to the  
17 government and then the government comes back and takes an  
18 adverse action against you.

19 In addition, we're at the pleading stage, so for the  
20 government to come back and say, well, our reason for doing X,  
21 Y, Z was different, factually different than what plaintiffs  
22 say, that argument simply is not available to the government  
23 at this stage. Maybe down the line with discovery  
24 depositions, interrogatories, maybe with all that maybe the  
25 government can come back and say, oh, you know, we have an

1 affidavit from such and such and he says that his factual  
2 reason for this was X, Y, Z, maybe, but that's down the line.

3 THE COURT: Help me with the O'Brien distinction  
4 between speech and conduct as it relates to the allegations in  
5 this particular part of your complaint. This is a (b)(6), so  
6 I've got to assume that the allegations for purposes of this  
7 motion are true, but help me with the difference, if any, in  
8 this case between speech as you describe it and conduct. You  
9 don't get -- the case law would appear to say that not all --  
10 not all speech is pure speech, that indeed you can't create  
11 speech out of conduct, and I guess my question is as alleged  
12 in the complaint why isn't what you have alleged conduct  
13 rather than speech?

14 MR. YOUNG: And that's some question, Your Honor.  
15 Here it is speech rather than conduct because -- it would be  
16 conduct if there had been no communication between Dana and  
17 the government. If he had just remained silent, had done  
18 nothing, or if he had perhaps only applied for both sets of  
19 licenses. But instead here, your Honor, there are multiple  
20 communiques back and forth between Dana and the government  
21 that move it from the realm of mere conduct to actual  
22 protected speech. There are ideas that are conveyed in the  
23 communiques back and forth which, again, distinguishes it from  
24 mere conduct.

25 THE COURT: Thank you. Anything further? I didn't



1 mean to cut you off, Mr. Young. If you want to continue on  
2 this particular issue, go ahead.

3 MR. YOUNG: On the First Amendment front, ultimately  
4 the government was trying to impose a take-it-or-leave-it  
5 arrangement on Bailey, or sorry, on Dana in these -- regarding  
6 the First Amendment claim, and Dana refused, and perhaps  
7 understandably the government didn't like that, but that's  
8 really what the government was trying to do. It was trying to  
9 really impose its will here.

10 And in addition, your Honor, I do want to -- well, no, I  
11 guess I'll probably save that for the summary judgment, I  
12 think. But I think that's everything for the First Amendment.

13 THE COURT: All right. Thank you. Counsel,  
14 anything else on the First Amendment issue?

15 MS. ALOE: Just briefly, your Honor.

16 Yes, we are early in this litigation, but plaintiffs  
17 attached to their complaint Exhibits A through FF, and within  
18 those exhibits it clearly shows that the department did not  
19 take an adverse action, let alone an action because of speech.  
20 No discovery is needed when the communication of the parties  
21 is right before this Court, and any document incorporated into  
22 a complaint is proper under the 12(b)(6) standard. And as far  
23 as the Court's question about whether this is conduct, I would  
24 agree that the conduct was the Serafins decided they didn't  
25 want to hold up their end of their deal, and so the department

1 acted accordingly. It had to issue the Saginaw Bay licenses  
2 under the grandfathering position. It didn't have to issue  
3 the Harbor Beach license until a permanent one was negotiated.  
4 Mr. Serafin's communication shows that he wasn't interested in  
5 that anymore.

6 Thank you.

7 THE COURT: All right. Thank you.

8 Any other argument on the defendants' motions? We'll  
9 move to the plaintiffs' motion at this point. Go ahead,  
10 Mr. Young.

11 MR. YOUNG: I just had one more point that I meant  
12 to bring at another time. Sister counsel raised this idea  
13 that the government has the option to rely on the idea that  
14 plaintiffs offered this arrangement, and I just want to  
15 emphasize for the Court that that is an argument that is  
16 unavailable to the government. As I mentioned before, the  
17 government always has the obligation and requirement to act in  
18 a way that is in line with the United States Constitution,  
19 Michigan Constitution, so the government can't say, oh, well,  
20 a citizen offered me this arrangement, so I guess it's okay.  
21 That simply is not an available argument to the government.  
22 The government can't use that to cure a constitutional  
23 violation. The government has an independent duty  
24 irrespective of what a citizen may suggest or what a citizen  
25 may agree to. It can never cure a constitutional violation

1 with that theory.

2 THE COURT: Thank you, Counsel.

3 All right. Let's move to the plaintiffs' motion for  
4 partial summary judgment. Mr. Young, go ahead, sir.

5 MR. YOUNG: Thank you, your Honor. Some of this  
6 will be ground we've already gone over, but just for the sake  
7 of completeness, first regarding the Harbor Beach license, as  
8 the government has conceded multiple times, there was a  
9 property interest in it from March to December, and that's a  
10 fatal concession on the government's part because, as we have  
11 discussed, the Administrative Procedures Act operates to  
12 cause the Harbor Beach license to not be expired, and that's  
13 the government's -- that's the government's whole argument is  
14 that the Harbor Beach license expired, so no property -- or  
15 that there's no property right, and with no property right,  
16 Fourteenth Amendment doesn't attach and all the rest. So this  
17 is really the pivot point, your Honor, is that because  
18 plaintiff timely applied, the Administrative Procedures Act  
19 operated to render the license nonexpired, and with an  
20 unexpired license, the property right remains, Fourteenth  
21 Amendment attaches, due process attaches and everything that  
22 flows from that.

23 Next category, your Honor, is the Harbor Beach license  
24 and the other conditions. As we have discussed, some  
25 conditions are permissible, but not any condition. Not any

1       conceivable condition. There are limits, and there are  
2       examples in the statute. Those examples reveal the nature of  
3       what these conditions can be. These conditions go to how  
4       commercial fishing is performed. They don't go to whether you  
5       get a license or not. And in addition, in that same part of  
6       the commercial fishing section, in Subsection 4 it  
7       specifically contemplates the applicability of the  
8       Administrative Procedures Act when someone, a commercial  
9       fishing license holder, has allegedly violated one of these  
10      conditions.

11             So then going on, there are the Saginaw Bay hostage  
12      licenses, which are intertwined with the Harbor Beach license.  
13      The government imposed this Sophie's Choice, you can do one or  
14      the other but not both. And regarding those licenses, the  
15      hostage ones, the Saginaw Bay hostage ones, pardon me, there  
16      is a violation, a constitutional violation, because as there's  
17      no dispute that there's a property interest in those because  
18      those are pre-1968, so when the government says, oh, I'm going  
19      to impose this condition, there's definitely a property right  
20      being impacted. But it's also the other way as well. It's  
21      bi-directional. It's also the Harbor Beach license and  
22      imposing a condition on that license as well that's also a  
23      violation.

24             And then, your Honor, also there's the species licenses.  
25      With those, unconnected to the first two sets, the species

1 licenses, plaintiffs requested the addition of species. And,  
2 again, these are pre-1968, so definitely a property right.  
3 The government unlawfully refuses to add the species because  
4 government did not offer notice and an opportunity to be  
5 heard. I just want to emphasize if the government would have  
6 complied with the process, maybe the government could have  
7 reached the conclusion that the government wanted to reach.  
8 Maybe. Our point is that there's a process in place to act as  
9 guard rails to limit the government to make sure that the  
10 government's not running roughshod over the property rights of  
11 those who hold commercial fishing licenses.

12 Additionally, your Honor, as I mentioned before, the  
13 government has almost entirely ignored Bailey, who is a  
14 distinct legal entity, another plaintiff, he's an owner of the  
15 licenses as well, and as I mentioned before, the government is  
16 at least bordering on forfeiture by not offering argument  
17 specifically regarding Bailey. Bailey and Dana are not  
18 interchangeable.

19 And alternatively, your Honor, regarding the issue about  
20 whether the certain counts, I think 10 to 15, are state law  
21 counts or federal law counts, we believe they are. We have  
22 incorporated every preceding prior paragraph. We have also in  
23 the allegations, specifically in these counts, we discuss how  
24 there are violations that we think it's explicit, but at the  
25 very least it's implicit that it violates procedural due

1 process of the Fourteenth Amendment.

2 If your Honor needs that to be more clear, we'd be happy  
3 to amend. We think it is sufficient how it is, but we're  
4 happy to make it more explicit if need be.

5 So there's my overview, your Honor. I'm happy to field  
6 questions on this motion. I mean, it's kind of -- this one is  
7 kind of a more-targeted version of kind of the broader motion  
8 that sister counsel has.

9 THE COURT: I don't have any questions at this  
10 point.

11 MR. YOUNG: Okay.

12 MS. ALOE: I feel like I need to do a little  
13 clarification here. The department agrees that while the  
14 Harbor Beach license was in effect it was a protected property  
15 right. That's pretty obvious. Everything that the plaintiffs  
16 complain about took place after December 31, 2022. And even,  
17 again, if we assume they're correct that it didn't expire  
18 until the department made its final decision, they still have  
19 no property right in renewal of this license.

20 Under Part 473 Subsection 4 at 47302(4), it provides a  
21 person a right to a contested case if the license is revoked  
22 or suspended. Similarly in the APA at 24.2922, it provides  
23 suspension, revocation, annulment, withdrawal, recall,  
24 cancellation. Plaintiffs on the face of their complaint,  
25 which can be seen as simple as looking at the titles at ECF

1 43, Page ID 1225 and ECF 43, Page ID 1231 complaining about  
2 renewing the licenses for Michigan, 2023 commercial fishing  
3 licenses, and a second page cite is for 2024, this is what  
4 they complain of, renewal of the Harbor Beach license. Under  
5 the plain language of the substantive law, there is no right  
6 to renewal.

7 As far as this idea that they can somehow change their  
8 state law claims into federal claims, we briefed this issue.  
9 A plaintiff is definitely allowed to incorporate preceding  
10 paragraphs, but that doesn't transform them into anything but  
11 what they are on their face. That goes to basic civil  
12 procedure requirements that they provide the defendants fair  
13 notice of the claims against them, and here from plaintiffs'  
14 complaint where they say these claims -- this Court has  
15 jurisdiction over -- under the supplemental jurisdiction  
16 provision in their expedited motion and their first motion for  
17 leave to amend their complaint they say they wanted to add  
18 state law claims, and on the face of the complaint these are  
19 state law claims.

20 As far as being granted leave, plaintiffs are certainly,  
21 you know, left to proceed how they see fit, but the department  
22 will oppose that on the same grounds it opposed the first time  
23 plaintiffs amended, and that is it futile because nothing  
24 changes when it comes to this lack of a protected property  
25 right in renewal of the Harbor Beach license.

1 And I would also just point the Court to MCL 324.47302.  
2 Those subprovisions squarely put in the department's  
3 discretion what type of fish can be taken by species and kind  
4 and amount, how they can be taken, where they're taken.

5 Going back to Med Corp., plaintiffs don't have a property  
6 right in something that is squarely left to the discretion of  
7 the department. When it comes to those matters, even if they  
8 were pled as due process violations for not adding the  
9 requested fish species, plaintiffs would still lose.

10 Otherwise I believe that the department, or state  
11 defendants, excuse me, have adequately addressed the lack of a  
12 property right in the Harbor Beach license and in our response  
13 in opposition to plaintiffs' motion for partial summary  
14 judgment, which I appreciate the Court letting me file two  
15 days late. We adequately also brief how they can't change the  
16 nature of their allegations, and even if they were seeking  
17 summary judgment on the allegations as pled under state law,  
18 they would still lose. So unless if your Honor has any  
19 questions for me, I will rest on the briefing.

20 THE COURT: Thank you. No questions at this point.  
21 Mr. Young, anything further?

22 MR. YOUNG: Thank you, Your Honor.

23 Your Honor, given how the Administrative Procedures Act  
24 interacts with the commercial fishing statute, the agency's  
25 action effectively was a cancellation of the license, the



1 Harbor Beach license. And we have a case, it's Bois Blanc  
2 Island that touches on this. And I can give you the ECF  
3 number here. I am on -- starts on ECF Number 55, Page ID 1643  
4 at the bottom, and then it kind of goes over to the next page.  
5 We have an explanatory parenthetical. In that case, the Court  
6 is concluding that because the DNR sought a revocation,  
7 withdrawal, or cancellation of the licenses at issue, the  
8 Michigan Administrative Procedures Act's requirements of  
9 notice and an opportunity to be heard to show compliance with  
10 the present case. So it's supporting the idea that in our  
11 scenario here, the Administrative Procedures Act reaches our  
12 scenario. And I understand why sister counsel wants to avoid  
13 that, because who wants to be restrained? I get that. But we  
14 have restraints on the government for a reason. Again, it  
15 doesn't stop the government from reaching a certain  
16 conclusion. It just puts processes in place to make sure the  
17 government's not running roughshod over property rights.

18 I'm happy to field any other questions you have, your  
19 Honor, again, regarding the Counts 10 to 15 if it's not  
20 sufficiently explicit. We think it is, but if it's not we'd  
21 be happy to amend that. But, again, it's noticed pleading.  
22 We think it's done more than enough to put defendants on  
23 notice that there are severe and serious due process  
24 violations. But if your Honor has questions, I'm happy to  
25 answer them.

1 THE COURT: I don't have any questions, Mr. Young,  
2 thank you.

3 All right. The Court will deem the motions submitted.  
4 The Court's going to issue a written opinion on this. I  
5 appreciate the quality of the written submissions as well as  
6 the oral arguments here today, and I'll get something out as  
7 soon as I can. Thank you.

8 THE CLERK: All rise, please. Court is adjourned.

9 (Proceedings concluded at 2:50 p.m.)  
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REPORTER'S CERTIFICATE

I, Lauret J. Henry, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Lauret J. Henry  
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